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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 STEVEN DIAZ,

No. CIV S-05-0376-MCE-CMK-P

12 Petitioner,

13 vs.

ORDER

14 DERRAL ADAMS,

15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding with appointed counsel, brings this petition
18 for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court are
19 petitioner's pro se petition for a writ of habeas corpus (Doc. 1), filed on February 25, 2005,
20 respondent's answer (Doc. 14), filed on December 15, 2005, and petitioner's reply (Docs. 24 and
21 25), filed by appointed counsel on March 27, 2006.

22 In his traverse, petitioner states that, at a minimum, an evidentiary hearing is
23 required on the issue of trial counsel's performance with respect to DNA testing of the forensic
24 evidence. By this order, respondent is hereby directed to file a response to petitioner's request
25 for an evidentiary hearing. Respondent should also address whether the court should grant leave
26 to take trial counsel's deposition prior to, or in lieu of, an evidentiary hearing and the potential

1 effect of a claim of attorney-client privilege on the issues presented in this case. Petitioner will
2 be given an opportunity to reply to respondent's response.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Within 30 days of the date of this order, respondent shall file a brief
5 addressing: (a) petitioner's request for an evidentiary hearing on the issue of trial counsel's
6 performance; (b) whether the court should grant leave to take trial counsel's deposition; and
7 (c) the effect of attorney-client privilege; and

8 2. Petitioner may file a reply brief within 15 days after the date of service of
9 respondent's brief.

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11 DATED: October 19, 2007

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13 **CRAIG M. KELLISON**
14 UNITED STATES MAGISTRATE JUDGE
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